

**United States Department of Labor
Employees' Compensation Appeals Board**

T.T., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Philadelphia, PA, Employer**

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**Docket No. 12-736
Issued: February 4, 2013**

Appearances:

*Thomas R. Uliase, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
PATRICIA HOWARD FITZGERALD, Judge

JURISDICTION

On February 16, 2012 appellant, through her attorney, filed a timely appeal of a January 25, 2012 Office of Workers' Compensation Programs' (OWCP) merit decision terminating her benefits and a November 22, 2011 decision denying her claim for recurrence of disability. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to consider the merits of the case.

ISSUES

The issues are: (1) whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits effective July 1, 2011; and (2) whether appellant met her burden of proof to establish a recurrence of disability on January 25, 2010 causally related to her June 1, 2006 employment injury.

On appeal counsel argued that Dr. Karl Rosenfeld, a Board-certified orthopedic surgeon, was not properly selected to serve as the impartial medical examiner under the Physicians

¹ 5 U.S.C. § 8101 *et seq.*

Directory System (PDS). He further argued that Dr. Rosenfeld's report was not sufficiently detailed and reasoned to carry the weight of the medical opinion evidence.

FACTUAL HISTORY

On August 15, 1990 appellant, then a 28-year-old flat sorting machine operator, filed an occupational disease claim alleging that she developed carpal tunnel syndrome due to typing in the performance of duty. She had a normal electromyography (EMG) on August 23, 1990. On February 11, 1991 OWCP accepted appellant's claim for right hand strain.

Appellant filed a second occupational disease claim on November 3, 1999 alleging that she developed pain and swelling in her left hand and shoulder. She underwent an EMG on March 8, 1995 which suggested a mild right C5 radiculitis. OWCP accepted appellant's claim for de Quervain's tenosynovitis of the wrist bilaterally, de Quervain's tenosynovitis of the right thumb and right wrist surgery. Appellant underwent a release of de Quervain's tenosynovitis of the right wrist on March 20, 2000. On January 9, 2001 OWCP authorized surgery for left wrist de Quervain's tenosynovitis.

On October 25, 2001 appellant filed a claim for right shoulder traumatic injury on that date. OWCP accepted this claim for contusion of the right shoulder on April 19, 2002. Appellant received a schedule award for 33 percent impairment of the right upper extremity and 23 percent impairment of the left upper extremity on May 27, 2003.

On March 8, 2004 appellant filed an occupational disease claim for right shoulder pain. OWCP accepted her claim for strain right shoulder and tendinitis right shoulder on May 27, 2004.

On March 24, 2004 appellant filed a traumatic injury claim alleging that she injured her right shoulder and arm reaching into a hamper to pick up loose mail. OWCP accepted this claim for aggravation of preexisting rotator cuff strain. Appellant returned to light-duty work on September 4, 2004.

Appellant underwent arthroscopy of the right shoulder, subacromial decompression and debridement of partial thickness rotator cuff tear and excision of the distal clavicle on June 18, 2004.

Appellant filed a recurrence of disability claim on October 4, 2004 alleging that she stopped work due to her March 8, 2004 employment injury. OWCP accepted appellant's claimed recurrence of disability on January 5, 2005. Appellant returned to light-duty work on February 21, 2006.

Appellant filed a notice of occupational disease on January 28, 2008 alleging that she developed brachial plexopathy and cervical radiculopathy in 2006 due to casing and sweeping mail. OWCP accepted appellant's claim for injury to brachial plexus, sprain of the neck and brachial radiculitis on June 19, 2008. On April 2, 2008 appellant underwent a magnetic resonance imaging (MRI) scan of the cervical spine which demonstrated spondylotic discs at C3-7.

Appellant requested a schedule award on February 27, 2009. On April 27, 2009 OWCP granted her a schedule award for an additional nine percent impairment of her right upper extremity.

In a report dated January 25, 2010, appellant's attending physician, Dr. Bruce Grossinger, an osteopath Board-certified in neurology and pain management, reported that appellant experienced increased pain in her neck and hands on the right greater than the left. Appellant exhibited severe spasms and pain in the midscapular region as well as swelling her hands. She also described headaches. Dr. Grossinger noted that EMG testing demonstrated cervical radiculopathy and brachial plexopathy. He diagnosed chronic pain due to cervical radiculopathy and brachial plexopathy with a component of tendinitis of the wrists. Dr. Grossinger opined that these diagnoses were all related to appellant's work activities. He stated that due to the worsening of her clinical presentation he removed her from work.

On January 31, 2010 appellant filed a recurrence of disability claim alleging that on January 25, 2010 she sustained a recurrence of disability due to her June 1, 2006 employment injury. She stated that she returned to work with restrictions and experienced pain in her neck and shoulder. Appellant stated on January 25, 2010 that her hands became swollen and she was unable to move her neck.

In a report dated February 22, 2010, Dr. Grossinger stated that he first examined appellant on June 13, 2006 due to her March 8, 2004 employment injury. He stated that appellant's July 16, 2006 nerve conduction studies and EMG demonstrated abnormalities consistent with right-sided brachial plexopathy. Dr. Grossinger reviewed an August 3, 2006 MRI scan which demonstrated bulging discs at C3-7. He noted on January 26, 2010 that he found appellant was totally disabled due to neck pain as well as reduced sensation in the median distribution and weakness in grip strength on the right. Dr. Grossinger opined that appellant's work stoppage was due to work-related activities with aggravation of her work-related injury of March 8, 2004 as well as cumulative repetitive stresses.

Appellant underwent a nerve conduction study and EMG on March 10, 2010. These tests were normal for bilateral median and ulnar nerves but suggestive of right C5-8 and left C6-8 radiculopathy. Dr. Najmi I. Sheikh, a Board-certified physiatrist, completed a report on March 10, 2010 and diagnosed chronic cervical sprain and strain with myofascitis of paravertebral muscles as well as bilateral shoulder sprain with myofascitis of mid-trapezius muscles. He attributed appellant's diagnosed conditions to her accepted 2006 occupational disease.

OWCP referred appellant for a second opinion examination on May 6, 2010 with Dr. Noubar A. Didizian, a Board-certified orthopedic surgeon. In a May 10, 2010 report, Dr. Didizian reported findings from physical examination and reviewed the medical history and statement of accepted facts. He found that appellant's current symptoms were not due to her accepted 2006 employment injury. Dr. Didizian opined that her current symptoms were due to degenerative disease of the cervical spine which was part of her genetic makeup and aging process. He further found that appellant did not require further treatment due to the 2006 employment injury as she had no evidence of ongoing sprain of the neck or any brachial plexus involvement. Dr. Didizian stated that she had returned to baseline with no residuals due to the 2006 employment injury. He concluded, "The claimant in my opinion has been overdiagnosed and overtreated for the date of injury of June 1, 2006 as being related to the nature of the job. At the present time, there is no objective finding to support that there is any evidence of ongoing

symptomatology related to the June 1, 2006 date of injury and accepted injury related to that date.”

In a note dated May 19, 2010, Dr. Grossinger found chronic evidence of cervical radiculopathy and brachial plexopathy and opined that these conditions were caused by work activities at the employing establishment.

By letter dated June 25, 2010, OWCP requested factual and medical evidence in support of appellant’s claimed recurrence of disability.

In a letter dated June 25, 2010, OWCP proposed to terminate appellant’s compensation and medical benefits based on Dr. Didizian’s report.

Dr. Grossinger completed a report on July 26, 2010 noting that appellant experienced a worsening of her clinical condition on January 25, 2010. He reported swelling in her right wrist and tenderness of the cervical facet joint, limited range of motion of the cervical spine and muscle spasm in the mid-scapular region. Dr. Grossinger reviewed Dr. Didizian’s report and disagreed finding that appellant had objective findings consistent with cervical radiculopathy including restriction in mobility and palpable changes in muscles in the cervical and trapezius areas as well as electrodiagnostic abnormalities. He stated, “[i]n my opinion it has been reasonable and necessary for her to be out of work between January 25, 2010 and this time due to aggravation of her injuries caused by increased volume of mail at work.” Dr. Grossinger stated that appellant could return to work four hours a day with limited lifting and reaching over head due to her neck.

On July 29, 2010 OWCP referred appellant for a second opinion examination with Dr. Zohar Stark, a Board-certified orthopedic surgeon.

By decision dated August 12, 2010, OWCP terminated appellant’s compensation benefits effective August 12, 2010. In a separate decision of the same date, it denied her claim for recurrence of disability on or after January 25, 2010. Counsel requested an oral hearing on August 17, 2010 before an OWCP hearing representative.

Dr. Stark completed a report on August 17, 2010. He noted appellant’s history of injury on March 8, 2004 while lifting at work. Dr. Stark found tenderness on palpation of the spinous process of the cervical vertebrae and tenderness over the trapezium muscle bilaterally with no spasm. He reported no sensory or motor deficit to the upper extremities and negative Tinel’s and Phalen’s signs. Dr. Stark stated that appellant’s aggravation of preexisting right shoulder sprain was not active and was not causing any objective findings. He stated that she had physical limitations due to degenerative disease of her shoulder as well as discogenic disease of her cervical spine which were not related to her March 8, 2004 employment injury.

Appellant testified at the oral hearing on December 7, 2010. She stated that, beginning in January 2010, she developed weakness and swelling in her right arm. Appellant also developed left arm tingling and numbness. She stopped work on January 25, 2010.

By decision dated February 15, 2011, the hearing representative vacated OWCP’s termination decision finding that a conflict of medical opinion existed between Dr. Didizian and appellant’s physicians.

OWCP prepared a statement of accepted facts, a list of specific questions and a statement of the conflict. The record contains a Memorandum of Referral to Specialist, an ME023-Appointment Schedule Notification referring appellant to Dr. Rosenfeld, a report of telephone call dated March 2, 2011 indicating that the appointment with Dr. Rosenfeld was scheduled by OWCP, and a screen capture indicating that Dr. John Benner, a Board-certified orthopedic surgeon, was bypassed to perform the impartial medical examination as he was not interested in performing the examination.

In a report dated April 19, 2011, Dr. Rosenfeld reviewed the statement of accepted facts and medical history. He noted that appellant reported neck pain and pain radiating down her neck to both hands, which became swollen on occasion. Dr. Rosenfeld found full range of motion of appellant's neck with pain and normal muscle strength in the upper extremities. He noted slight thenar atrophy of the right hand and found that percussing her median nerves caused pain up to the shoulder rather than distally. Dr. Rosenfeld reviewed appellant's MRI scan dated November 23, 2010 with a central left-sided disc protrusion at C6-7 and minor bulging from C3-6. He diagnosed chronic cervical problems and noted that appellant sustained an employment injury. Dr. Rosenfeld stated, "[i]t appears to me that[,] if any work-related condition was accepted, then obviously her symptoms at the present time date back to 2006 when she [stated] the pain began." He also stated that he found no evidence for brachial plexopathy and that only a degenerative state was causing her current symptoms. Dr. Rosenfeld concluded that appellant's current symptoms stemmed only from her neck, due to her chronic degenerative cervical state, but that she had no acute injury, no brachial plexopathy and no carpal tunnel syndrome as she had no objective finding. He diagnosed cervical degenerative disc disease and stated that if a cervical condition was accepted as work related then her current condition was due to ongoing problems from 2006.

Dr. Rosenfeld opined that appellant had no evidence of radiculitis or brachial plexus injury. He stated that appellant's symptoms were ongoing from 2006 and were not a new problem. Dr. Rosenfeld stated that the accepted 2006 injury did not aggravate, accelerate, exacerbate or precipitate any active conditions or disability on or after January 26, 2010. He opined that appellant could perform her date-of-injury position of modified distribution clerk. In reply to the question of whether any additional conditions should be added, Dr. Rosenfeld stated, "[t]he diagnosis in my opinion is cervical disc disease." He concluded that appellant did not require further medical treatment.

In a note dated November 29, 2010, Dr. Jason Brajer, a physician Board-certified in pain management and anesthesiology, found that appellant had limited range of motion of the cervical spine with pain on extension. He also reported slightly diminished biceps reflex on the right and diminished sensation along the C6 or C7 dermatomal distribution. Dr. Brajer also found diminished strength. He reported objective findings consistent with cervical radiculopathy and multiple disc bulges and attributed these conditions to appellant's June 1, 2006 employment incident.

Dr. Grossinger completed a report on February 9, 2011 and provided appellant's history of medical treatment. He noted that he conducted an EMG on February 3, 2011 which provided evidence on ongoing right-sided brachial plexopathy and left-sided C6 radiculopathy. Dr. Grossinger stated that appellant sustained a work-related injury on March 8, 2004 and "had recurrent and progressive symptomatology while attempting to work in recent years." He noted

that appellant had progressive clinical and electrodiagnostic abnormality. Dr. Grossinger concluded that appellant was totally disabled.

OWCP requested a supplemental report from Dr. Rosenfeld on June 2, 2011 addressing whether appellant's degenerative cervical disease was caused or aggravated by her work. Dr. Rosenfeld responded on June 9, 2011 and stated, "[h]owever, it is my opinion, with reasonable medical certainty, that[,] if there were an aggravation of her cervical disc disease, a high probability, that at least by the time I saw her, April 19, 2011, the problem from the aggravation was resolved and that her continued pain was from her underlying cervical state." Dr. Rosenfeld based his conclusions on the fact that appellant had no objective findings at the time his examination and on the fact that appellant had not worked for 14 months. He stated that, since appellant was no longer working, any pain due to her employment should have abated. Dr. Rosenfeld stated that appellant had a temporary aggravation of her neck pain due to her employment which would have ceased a month after she stopped work.

In a note dated May 5, 2011, Dr. Grossinger diagnosed cervical radiculopathy and multiple disc bulges and attributed appellant's ongoing symptoms to her June 1, 2006 employment injury.

By decision dated July 8, 2011, OWCP terminated appellant's wage-loss compensation and medical benefits effective July 1, 2011. It based the termination on the April 19, 2011 report from Dr. Rosenfeld. OWCP determined that Dr. Rosenfeld's findings that appellant had no continuing residuals including no brachial plexopathy and no clinical evidence of carpal tunnel syndrome or cervical disc degenerative disease were entitled to the weight of the medical evidence.

Counsel requested an oral hearing on July 14, 2011. Dr. Brajer continued to support a diagnosis of cervical radiculopathy due to her June 1, 2006 employment injury on August 9, 2011. Counsel presented argument at an oral hearing on August 10, 2011 regarding whether appellant's recurrence of disability on January 25, 2010 was causally related to her June 1, 2006 employment injury.

In a report dated August 9, 2011, Dr. Grossinger diagnosed right-sided brachial plexopathy as demonstrated on EMG on July 16, 2006. He also diagnosed abnormalities of the cervical spine on MRI scan including multilevel disc bulging. Dr. Grossinger examined appellant on January 25, 2010 and found aggravation of cervical radiculopathy and brachial plexopathy. He noted worsening of neck and arm symptoms as well as pain in the mid-scapular area. Dr. Grossinger found restriction of cervical range of motion and muscle spasm with tenderness and swelling in the right wrist. He performed EMG and nerve conduction studies on February 3, 2011 which demonstrated right-sided brachial plexopathy and left-sided C6 radiculopathy more prominent than in October 2009. Dr. Grossinger stated that appellant had aggravation of her clinical status in January 2010 following the increased volume of mail in the holiday season of December 2009. He disagreed with Dr. Rosenfeld's assessment of appellant's objective findings. Dr. Grossinger stated, "It remains my opinion that she has objective evidence of aggravation of the accepted injuries involving her neck and upper extremities." On October 5, 2011 he diagnosed cervical radiculopathy secondary to disc protrusion and disc bulges with cervical facet dysfunction. Dr. Grossinger noted that these symptoms are preferable to a workers' compensation incident on June 1, 2006.

At the oral hearing on November 17, 2011, counsel argued that Dr. Rosenfeld's reports were not sufficiently consistent and well reasoned to meet OWCP's burden of proof to terminate appellant's wage-loss compensation and medical benefits.

By decision dated November 22, 2011, the hearing representative found that appellant had not sustained a recurrence of disability as the worsening of appellant's condition on January 25, 2010 was not spontaneous. Rather, it was due to aggravation of her injuries caused by an increased volume of mail during the December 2010 holiday season.

Dr. Grossinger completed a note on December 6, 2011 and stated that appellant had neck pain with discomfort extending from her shoulders with numbness in her hands. He diagnosed recurrent problems with cervical radiculopathy and brachial plexopathy.

By decision dated January 25, 2012, the hearing representative found that appellant had no residuals of her accepted work-related conditions. She determined that Dr. Rosenfeld was selected through the appropriate process and that Dr. Grossinger's reports were not sufficient to create an additional conflict with Dr. Rosenfeld's reports. The hearing representative determined that Dr. Rosenfeld's reports were entitled to the weight of the medical opinion evidence.

LEGAL PRECEDENT -- ISSUE 1

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.² After it has determined that an employee has disability causally related to his or her federal employment, OWCP may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.³ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.⁴ To terminate authorization for medical treatment, OWCP must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁵

In situations where there are opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual background, must be given special weight.⁶

When OWCP secures an opinion from an impartial medical specialist and the opinion of the specialist requires clarification or elaboration, OWCP has the responsibility to secure a supplemental report from the specialist for the purpose of correcting the defect in the original report. However, when the impartial medical specialist's statement of clarification or elaboration is not forthcoming or if the physician is unable to clarify or elaborate on his original report or if

² *Mohamed Yunis*, 42 ECAB 325, 334 (1991).

³ *Id.*

⁴ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁵ *Id.*

⁶ *Nathan L. Harrell*, 41 ECAB 401, 407 (1990).

the supplemental report is also vague, speculative or lacks rationale, OWCP must refer appellant to a second impartial medical specialist for a rationalized medical report on the issue in question.⁷ Unless this procedure is carried out by OWCP, the intent of section 8123(a) of FECA, will be circumvented when the impartial specialist's medical report is insufficient to resolve the conflict of medical evidence.⁸

A physician selected by OWCP to serve as an impartial medical specialist should be wholly free to make a completely independent evaluation and judgment. To achieve this, OWCP has developed specific procedures for the selection of impartial medical specialists designed to provide safeguards against any possible appearance that the selected physician's opinion is biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and OWCP.⁹ The Federal (FECA) Procedure Manual provides that the selection of referee physicians (impartial medical specialists) is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the PDS should be used for this purpose wherever possible.¹⁰ The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations.¹¹ The PDS database of physicians is obtained from the American Board of Medical Specialties (ABMS) which contains the names of physicians who are Board-certified in certain specialties. The Board has held that an appropriate notation should be made in the directory when a specialist indicates his or her unwillingness to accept a case or when, for other valid reasons it is not advisable or practicable to use his or her services.¹²

ANALYSIS -- ISSUE 1

OWCP has accepted that appellant sustained right hand strain, de Quervain's tenosynovitis of the wrists and right thumb, contusion of the right shoulder, strain of the right shoulder and tendinitis of the right shoulder. It also accepted aggravation of preexisting rotator cuff strain in March 2004 and in 2008 injury to the brachial plexus, neck sprain and brachial radiculitis. Appellant's physician, Dr. Grossinger examined her in January 2010 and diagnosed chronic pain due to cervical radiculopathy and brachial plexopathy with a component of tendinitis of the wrists. He attributed the diagnosed conditions to appellant's employment and found that she was disabled. Dr. Sheikh examined appellant on March 10, 2010 and diagnosed chronic cervical sprain and strain with myofascitis of paravertebral muscles as well as bilateral shoulder sprain with myofascitis of mid-trapezius muscles. He attributed these conditions to appellant's accepted injuries.

⁷ *Terrance R. Stath*, 45 ECAB 412, 420 (1994).

⁸ *Harold Travis*, 30 ECAB 1071 (1979).

⁹ *B.P.*, Docket No. 08-1457 (issued February 2, 2009).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003).

¹¹ *Id.* at Chapter 3.500.7 (September 1995, May 2003).

¹² *David Peisner*, 39 ECAB 1167 (1988).

On May 10, 2010 Dr. Didizian performed a second opinion examination for OWCP and concluded that appellant's current symptoms were not due to her accepted 2006 employment injury. Instead he attributed appellant's ongoing conditions to nonemployment-related degenerative disease of the cervical spine. Dr. Didizian determined that appellant did not require further treatment due to the 2006 employment injury and that appellant had returned to baseline with no residuals due to the 2006 employment injury. He found no objective findings to support continuing employment-related injury. Dr. Stark examined appellant for OWCP on August 17, 2010 and stated that appellant had physical limitations due to degenerative disease of her shoulder as well as discogenic disease of her cervical spine which were not related to her March 8, 2004 employment injury.

Due to the disagreements regarding the nature and extent of appellant's injury-related condition and disability between appellant's physicians, Drs. Grossinger and Sheikh and OWCP's physicians Dr. Didizian and Stark, OWCP found that there was a conflict of medical opinion evidence and referred appellant to Dr. Rosenfeld for an impartial medical examination.

Contrary to counsel's argument, the record demonstrates that OWCP properly utilized the PDS in selecting Dr. Rosenfeld as the impartial medical examiner. OWCP confirmed Dr. Rosenfeld's availability on March 2, 2011 and scheduled appellant for an appointment. The record includes a RME Referral Form, iFECS Report: ME023 -- Appointment Schedule Notification and an iFECS screen shot which indicated Dr. Benner had been bypassed. Dr. Benner was bypassed because he was not interested in performing the examination. The Board finds OWCP properly selected Dr. Rosenfeld as IME.¹³

Dr. Rosenfeld completed his initial report on April 19, 2011 and reviewed the statement of accepted facts and medical history. He provided findings on examination including full range of motion of appellant's neck with pain, normal muscle strength in the upper extremities, slight thenar atrophy as well as pain when percussing her median nerves. Dr. Rosenfeld reviewed appellant's MRI scan dated November 23, 2010 with a central left-sided disc protrusion at C6-7 and minor bulging from C3-6. He stated, "[i]t appears to me that if any work-related condition was accepted, then obviously her symptoms at the present time date back to 2006 when she said the pain began." Dr. Rosenfeld also stated that if a cervical condition was accepted as work-related then her current condition was due to ongoing problems from 2006. He stated that the accepted 2006 injury did not aggravate, accelerate, exacerbate or precipitate any active conditions or disability on or after January 26, 2010. Dr. Rosenfeld opined that appellant could perform her date-of-injury position of modified distribution clerk. He diagnosed cervical disc disease and concluded that appellant did not require further medical treatment.

The Board finds that Dr. Rosenfeld's initial report was contradictory. Dr. Rosenfeld opined that appellant's current symptoms were due to her 2006 employment injury accepted for brachial plexus injury, neck sprain and brachial radiculitis. He explicitly stated that, if a cervical condition was accepted, then her current condition was due to the 2006 employment injury. As a cervical condition, neck sprain, was accepted, Dr. Rosenfeld's initial report contains medical support for appellant's continuing employment related disability. However, he also stated that the 2006 injury did not result in conditions or disability after January 26, 2010. Due to these issues, OWCP requested a supplemental report.

¹³ C.W., Docket No. 12-1211 (issued November 15, 2012).

Dr. Rosenfeld responded on June 9, 2011 and noted that appellant's accepted conditions included a neck sprain in 2006. He stated that appellant had no evidence of brachial plexopathy or carpal tunnel syndrome and attributed her current symptoms to cervical degenerative disc disease. Dr. Rosenfeld then stated that if there was an aggravation of cervical disc disease that aggravation should have resolved and that her current pain was from the underlying cervical condition. He reached this conclusion as appellant had no objective findings and that he based his diagnosis on ongoing pain and x-rays. Dr. Rosenfeld further noted that appellant had been out of work for 14 months and that therefore her pain should have resolved. He concluded that appellant's aggravation of cervical disc disease was temporary and should have ended within a month of ceasing employment.

The Board finds that Dr. Rosenfeld's supplemental report is not sufficiently detailed and well reasoned to meet OWCP's burden of proof to terminate appellant's compensation and medical benefits. Dr. Rosenfeld determined that appellant sustained a temporary aggravation of her underlying cervical disc disease. He did not explain the basis for determining that appellant had only a temporary aggravation which would have ceased within a month after stopping work. Dr. Rosenfeld noted that he based his diagnosis on x-rays, but did not address whether appellant's condition of cervical disc disease was unchanged from pre 2006 x-rays and post 2006 x-rays. He found that there were no continuing objective findings, but did not explain the cause of the thenar atrophy identified on his initial report. Dr. Rosenfeld determined that appellant's temporary aggravation of cervical degenerative disc disease would have ended within a month, was vague and unsupported by adequate medical rationale.¹⁴

The Board finds that there remains an unresolved conflict of medical opinion in this case. Therefore, OWCP has not met its burden of proof to terminate appellant's wage-loss compensation and medical benefits for the accepted employment injury.

LEGAL PRECEDENT -- ISSUE 2

A recurrence of disability means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations.¹⁵

Appellant has the burden of establishing by the weight of the substantial, reliable and probative evidence, a causal relationship between her recurrence of disability commencing January 25, 2010 and her June 2006 employment injury.¹⁶ This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate

¹⁴ J.C., Docket No. 12-623 (issued December 13, 2012).

¹⁵ 20 C.F.R. § 10.5(x).

¹⁶ *Dominic M. DeScala*, 37 ECAB 369, 372 (1986); *Bobby Melton*, 33 ECAB 1305, 1308-09 (1982).

factual and medical history, concludes that the disabling condition is causally related to employment factors and supports that conclusion with sound medical reasoning.¹⁷

ANALYSIS -- ISSUE 2

Appellant filed a notice of recurrence of disability alleging that on January 25, 2010 she sustained a recurrence of disability due to her June 1, 2006 employment injury in that her hands became swollen and she was unable to move her neck.

Dr. Grossinger completed several reports supporting appellant's disability for work beginning January 25, 2010. On February 22, 2010 he reviewed an August 3, 2006 MRI scan which demonstrated bulging discs at C3-7. Dr. Grossinger opined that appellant's work stoppage was due to work-related activities including aggravation of her work-related injury of March 8, 2004 as well as cumulative repetitive stresses. In his July 26, 2010 report, he attributed appellant's work stoppage to aggravation of her injuries caused by increased volume of mail at work. On August 9, 2011 Dr. Grossinger stated that appellant had aggravation of her clinical status in January 2010 following the increased volume of mail in the holiday season of December 2009.

These notes do not support that appellant sustained a spontaneous change in a medical condition without new exposure to the work environment. Dr. Grossinger repeatedly attributed appellant's disability after January 25, 2010 to her additional work duties including increased mail volume over the holidays in 2009.

On October 5, 2011 Dr. Grossinger diagnosed cervical radiculopathy secondary to disc protrusion and disc bulges with cervical facet dysfunction and opined that appellant's symptoms were due to her June 1, 2006 employment injury. On March 10, 2000 Dr. Sheikh diagnosed chronic cervical sprain and strain and bilateral shoulder sprain. He attributed appellant's diagnosed conditions to her accepted 2006 occupational disease. Dr. Brajer reported objective findings consistent with cervical radiculopathy and multiple disc bulges and attributed these conditions to appellant's June 1, 2006 employment injury. While these reports support that appellant's disability after January 25, 2010 was due to her accepted employment injuries rather than additional work exposures, none of the physicians offered medical reasoning explaining how this opinion on causal relationship was reached. Additional explanation is necessary especially given Dr. Grossinger's alternative conclusions regarding the cause of appellant's disability in January 2010.

OWCP's second opinion physicians did not support that appellant had any condition or disability on or after January 25, 2010. While Dr. Rosenfeld supported that appellant had a temporary aggravation of her cervical disc disease, he did not offer any opinion regarding the cause of this aggravation, be it spontaneous or due to additional work duties.

The Board finds that the record does not contain the necessary medical opinion evidence to establish that appellant sustained a recurrence of disability on or after January 25, 2010.

¹⁷ See *Nicolea Bruso*, 33 ECAB 1138, 1140 (1982).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP did not meet its burden of proof to terminate appellant's wage-loss compensation and medical benefits due to an unresolved conflict of medical opinion evidence. The Board further finds that she did not submit the necessary rationalized medical opinion evidence to establish that she sustained a recurrence of disability on January 25, 2010.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2012 decision of the Office of Workers' Compensation Programs is reversed and the November 22, 2011 decision is affirmed.

Issued: February 4, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board